

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Apr 29, 2025**

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

MARIA L.,<sup>1</sup>

Plaintiff,

v.

LELAND DUDEK, Acting  
Commissioner of Social Security,<sup>2</sup>

Defendant.

No. 4:24-cv-05122-EFS

**ORDER AFFIRMING THE ALJ'S  
DENIAL OF BENEFITS**

<sup>1</sup> For privacy reasons, Plaintiff is referred to by first name and last initial or as "Plaintiff." See LCivR 5.2(c).

<sup>2</sup> Leland Dudek became the Acting Commissioner of Social Security. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, and section 205(g) of the Social Security Act, 42 U.S.C. § 405(g), he is hereby substituted as the defendant.

1 Due to psoriasis, psoriatic arthritis, depression, degenerative disc  
2 disease of the lumbar spine, left shoulder osteoarthritis, left shoulder  
3 bursitis, adhesive capsulitis of the left shoulder, and migraines,  
4 Plaintiff Maria L. claims she is unable to work full-time and applied for  
5 social-security benefits. She appeals the denial of benefits by the  
6 Administrative Law Judge (ALJ) on the grounds that the ALJ erred in  
7 failing to deem her illiterate and improperly relied on VE testimony at  
8 step five that did not consider her illiteracy. Because the record  
9 reflects that Plaintiff had a marginal (sixth grade) education, the  
10 Administrative Law Judge's (ALJ) nondisability decision is adequately  
11 explained and supported by substantial evidence. For the reasons that  
12 follow, the ALJ's decision is affirmed.  
13  
14

## 15 I. Background

16 In February 2021, Plaintiff filed an application for benefits under  
17 Title 2, claiming disability beginning May 2, 2019, based on the  
18 physical impairments noted above.<sup>3</sup> After the agency denied her  
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22 <sup>3</sup> AR 269-272.  
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1 application initially and on reconsideration<sup>4</sup>, Plaintiff requested a  
2 hearing before an ALJ.<sup>5</sup> ALJ MaryKay Rauenzahn held a telephonic  
3 hearing in August 2023, during which Plaintiff testified with  
4 assistance of a translator and a vocational expert testified.<sup>6</sup> On  
5 October 11, 2023, the ALJ issued a decision denying the claim.<sup>7</sup> The  
6 Appeals Council denied Plaintiff's request for review, and she filed a  
7 timely appeal to this Court.<sup>8</sup>

9 The ALJ found Plaintiff's alleged symptoms were not entirely  
10 consistent with the medical evidence and the other evidence.<sup>9</sup> As to  
11 medical opinions, the ALJ found:

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16 <sup>4</sup> AR 170, 177.

17 <sup>5</sup> AR 182.

18 <sup>6</sup> AR 66-87.

19 <sup>7</sup> AR 17-43.

20 <sup>8</sup> AR 1-9.

21 <sup>9</sup> AR 29-33.

- The opinions of state agency consultants Tim Schofield, MD; Wayne Hurley, MD; and Howard Platter, MD, to be partly persuasive.
- The opinions of state agency psychologists Renee Eisenhauer, PhD; Matthey Comrie, PsyD; Steven Haney, MD; and Gary Nelson<sup>10</sup> to be partly persuasive.
- The opinion of consultative examiner K. Mansfield-Blair, PhD, to be not fully persuasive.
- The opinion of consultative examiner Linda Lindman Wolcott, PhD, to be generally persuasive.
- The opinion of treating source Javier Huerta, PA, to be on an issue reserved to the Commissioner.<sup>11</sup>

As to the sequential disability analysis, the ALJ found:

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<sup>10</sup> The record does not identify Gary Nelson's degree but lists his name after "MC/PC Signature" and identifies "Medical Specialty Code: 38 Psychology." AR 159.

<sup>11</sup> AR 33-36.

- 1           • Plaintiff met the insured status requirements of the Social  
2           Security Act through March 31, 2024.
- 3           • Step one: Plaintiff had not engaged in substantial gainful  
4           activity since her alleged onset date of May 2, 2019.
- 5           • Step two: Plaintiff had the following medically determinable  
6           severe impairments: psoriasis; psoriatic arthritis;  
7           depressive disorder/reactive depression; lumbar spine  
8           degenerative disc disease with L5 radiculopathy; left  
9           shoulder osteoarthritis; left shoulder bursitis; adhesive  
10          capsulitis of the left shoulder; and migraines.
- 11          • Step three: Plaintiff did not have an impairment or  
12          combination of impairments that met or medically equaled  
13          the severity of one of the listed impairments and specifically  
14          considered Listings 1.15, 1.18, 14.09, 11.02, and 12.04.
- 15          • RFC: Plaintiff had the RFC to perform work at the light  
16          exertional level with the following exceptions:  
17          [Plaintiff] can lift and carry 20 pounds occasionally  
18          and 10 pounds frequently. [Plaintiff] can stand and/or  
19          walk for approximately four hours and sit for  
20          approximately four hours, in an eight-hour workday.  
21          [Plaintiff] cannot climb ladders, ropes and scaffold and  
22          can occasionally climb stairs and ramps. [Plaintiff] can  
23

1 occasionally stoop, crouch, kneel and crawl. [Plaintiff]  
2 can frequently handle and finger bilaterally. [Plaintiff]  
3 can occasionally reach overhead and frequently reach  
4 in all other directions with the left upper extremity.  
5 [Plaintiff] should have no exposure to extreme cold,  
6 extreme heat, and vibrations, and cannot perform  
7 work in near proximity to moving mechanical parts,  
8 nor work in high, unprotected places, as rated by the  
9 Selective Characteristics of Occupations of the  
10 Dictionary of Occupational Titles (SCO-DOT).  
11 [Plaintiff] can understand, remember, and carry out  
12 simple instructions and tasks. [Plaintiff] cannot  
13 perform work on a moving conveyor belt, nor work  
14 that requires hourly quotas.

- 15 • Step four: Plaintiff was unable to perform her past relevant  
16 work as a fruit worker and a picking crew supervisor.
- 17 • Step five: Plaintiff was able to perform jobs available in the  
18 national economy in substantial numbers as a small parts  
19 assembler (DOT # 706.684-022, light, SVP 2), cafeteria  
20 attendant (DOT # 311.677-010, light, SVP 2), counter clerk  
21 (DOT # 249.366-010, light, SVP 2), and an electronics  
22 worker (DOT # 726.687-010, light, SVP 2).<sup>12</sup>

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23 <sup>12</sup> AR 27-37.

1 Plaintiff timely requested review by this Court.<sup>13</sup>

2 **II. Standard of Review**

3 The ALJ’s decision is reversed “only if it is not supported by  
4 substantial evidence or is based on legal error,”<sup>14</sup> and such error  
5 impacted the nondisability determination.<sup>15</sup> Substantial evidence is  
6 “more than a mere scintilla but less than a preponderance; it is such  
7 relevant evidence as a reasonable mind might accept as adequate to  
8 support a conclusion.”<sup>16</sup>  
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11  
12 <sup>13</sup> ECF No. 1.

13 <sup>14</sup> *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). *See* 42 U.S.C. §  
14 405(g).

15 <sup>15</sup> *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012) ), *superseded*  
16 *on other grounds by* 20 C.F.R. § 416.920(a) (recognizing that the court  
17 may not reverse an ALJ decision due to a harmless error—one that “is  
18 inconsequential to the ultimate nondisability determination”).  
19

20 <sup>16</sup> *Hill*, 698 F.3d at 1159 (quoting *Sandgathe v. Chater*, 108 F.3d 978,  
21 980 (9th Cir. 1997)). *See also* *Lingenfelter v. Astrue*, 504 F.3d 1028,  
22 1035 (9th Cir. 2007) (The court “must consider the entire record as a  
23

### III. Analysis

Plaintiff seeks relief from the denial of disability on the single ground that the ALJ erred in failing to deem Plaintiff to be illiterate and argues that the ALJ erred in relying on VE testimony that Plaintiff could find work in the general economy because the ALJ's hypothetical to the VE did not include a limitation that Plaintiff was illiterate. The Commissioner argues there was no error because the regulation was amended in 2020 and the ALJ reasonably found pursuant to the amended regulation that Plaintiff's sixth grade education, although not in the United States, and ability to read and write simple sentences in Spanish was properly classified as a "marginal education" and not illiteracy. As is explained below, the

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whole, weighing both the evidence that supports and the evidence that detracts from the Commissioner's conclusion," not simply the evidence cited by the ALJ or the parties.) (cleaned up); *Black v. Apfel*, 143 F.3d 383, 386 (8th Cir. 1998) ("An ALJ's failure to cite specific evidence does not indicate that such evidence was not considered[.]").



1 Court agrees with the Commissioner and affirms the ALJ's  
2 nondisability finding.

3 **A. Step Five: Plaintiff fails to establish consequential error**

4 Plaintiff argues the ALJ erred in relying on the VE testimony and  
5 by failing to include a limitation that Plaintiff was illiterate. She  
6 argues that she is not able to read and write in English and that the  
7 VE identified jobs which require a language level of two, and therefore  
8 would require her to be able to read and write English.  
9

10 1. Standard

11 At step five, the ALJ has the burden to identify specific jobs  
12 existing in substantial numbers in the national economy that claimant  
13 can perform despite their identified limitations.<sup>17</sup> At an administrative  
14 hearing, an ALJ may solicit vocational expert testimony as to the  
15 availability of jobs in the national economy.<sup>18</sup> A vocational expert's  
16 testimony may constitute substantial evidence of the number of jobs  
17  
18

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20 <sup>17</sup> *Johnson v. Shalala*, 50 F.3d 1428, 1432 (9th Cir. 1995). See 20 C.F.R.  
21 § 404.1520(g).

22 <sup>18</sup> *Tackett v. Apfel*, 180 F.3d 1094, 1100 (9th Cir. 2011).  
23

1 that exist in the national economy.<sup>19</sup> The ALJ's decision regarding the  
2 number of alternative occupations must be supported by substantial  
3 evidence.<sup>20</sup>

4 At step five, the ALJ considers the claimant's background and  
5 RFC, along with the testimony of the vocational expert, to decide  
6 whether the claimant can perform available jobs notwithstanding his  
7 functional limitations.<sup>21</sup> If the vocational expert's "opinion that the  
8 applicant is able to work conflicts with, or seems to conflict with, the  
9 requirements listed in the *Dictionary*, then the ALJ must ask the  
10 expert to reconcile the conflict before relying on the expert to decide if  
11 the claimant is disabled":<sup>22</sup>  
12  
13

14 For a difference between an expert's testimony and  
15 the *Dictionary's* listings to be fairly characterized as a

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16 <sup>19</sup> *Bayliss v. Barnhart*, 427 F.3d 1211, 1218 (9th Cir. 2005).

17 <sup>20</sup> *Farias v. Colvin*, 519 F. App'x 439, 440 (9th Cir. 2013) (unpublished).

18 *See Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012).

19 <sup>21</sup> 20 C.F.R. §§ 404.1520(g), 404.1560(c); *Tackett v. Apfel*, 180 F.3d  
20 1094, 1100 (9th Cir. 1999); *Hill*, 698 F.3d at 1161.

21 <sup>22</sup> *Gutierrez v. Colvin*, 844 F.3d 804, 807 (9th Cir. 2016).

1 conflict, it must be obvious or apparent. This means that the  
2 testimony must be at odds with the *Dictionary*'s listing of  
3 job requirements that are essential, integral, or expected.  
4 This is not to say that ALJs are free to disregard  
5 the *Dictionary*'s definitions or take them with a grain of  
6 salt—they aren't. But tasks that aren't essential, integral,  
7 or expected parts of a job are less likely to qualify as  
8 apparent conflicts that the ALJ must ask about. Likewise,  
9 where the job itself is a familiar one—like cashiering—less  
10 scrutiny by the ALJ is required.<sup>23</sup>

11  
12 The ALJ—and the reviewing court—are to consider not only the  
13 *Dictionary* and SCO, but also common experience, to determine  
14 whether there is an apparent conflict.<sup>24</sup>

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15 <sup>23</sup> *Id.* at 808; *see also* SSR 00-4p (“When a [vocational expert] . . .  
16 provides evidence about the requirements of a job or occupation, the  
17 adjudicator has an affirmative responsibility to ask about any possible  
18 conflict between that [vocational expert] . . . evidence and information  
19 provided in the [*Dictionary*].”).

20 <sup>24</sup> *Lamear v. Berryhill*, 865 F.3d 1201, 1205–06 (9th Cir. 2017); *see also*  
21 SSR 00-4p (requiring the ALJ to consider the *Dictionary* and SCO);  
22 SSR 83-14 (referencing the *Dictionary* and SCO).

2. Analysis of the ALJ's Findings

The ALJ found that Plaintiff had a marginal education pursuant to 20 C.F.R. § 404.1564.<sup>25</sup> Plaintiff reported in her Adult Disability Report that she had completed the 6<sup>th</sup> grade in 1989 in Garcia De La Cadena, Mexico.<sup>26</sup> She reported that she was not in any type of special education program, that she could both read and write simple messages, such as a shopping list or short note and that she used written Spanish in most everyday situations.<sup>27</sup>

The Court concludes, based on Plaintiff's representations, that the ALJ properly found Plaintiff to have a marginal education and did not find her to be illiterate.

In 2020, 20 C.F.R. § 404.1564(b) was amended to omit the requirement that the ALJ consider the claimant's ability to read and understand English when evaluating education. The amended

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<sup>25</sup> AR 36.

<sup>26</sup> AR 313.

<sup>27</sup> *Id.*

1 regulation was effective April 27, 2020.<sup>28</sup> Plaintiff's claim was filed in  
2 February 2021; therefore, the amended regulation applies.

3 20 C.F.R. § 404.1564 provides:

4 (1) Illiteracy. Illiteracy means the inability to read or write.  
5 We consider someone illiterate if the person cannot read or  
6 write a simple message such as instructions or inventory  
7 lists even though the person can sign his or her name.  
8 Generally, an illiterate person has had little or no formal  
9 schooling.

10 (2) Marginal education. Marginal education means ability in  
11 reasoning, arithmetic, and language skills which are needed  
12 to do simple, unskilled types of jobs. We generally consider  
13 that formal schooling at a 6th grade level or less is a  
14 marginal education.

15 (3) Limited education. Limited education means ability in  
16 reasoning, arithmetic, and language skills, but not enough  
17 to allow a person with these educational qualifications to do  
18 most of the more complex job duties needed in semi-skilled  
19 or skilled jobs. We generally consider that a 7th grade  
20 through the 11th grade level of formal education is a limited  
21 education.

22 Plaintiff implies that the newer regulation was vague in some  
23 way as to the fact that the new regulation contemplates an education  
in the United States only. The Court finds this argument non-

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<sup>28</sup> See 85 FR 10586-01, 2020 WL 885690 (Feb. 25, 2020).

1 persuasive. In finalizing the amended regulation, SSA explained that  
2 it was eliminating the education category –“inability to communicate in  
3 English”— because it “is no longer a useful indicator of an individual’s  
4 educational attainment or of the vocational impact of an individual’s  
5 education because of changes in the national workforce since we  
6 adopted the current rule more than 40 years ago.”<sup>29</sup>

8 Additionally, on March 9, 2020, the Administration published a  
9 new Social Security Ruling, SSR 20-1p, which interpreted the new  
10 regulation.<sup>30</sup>

11 Social Security Ruling, SSR 20-01p provides:

12 II. Category of Illiteracy

13 A. Generally

14 We consider an individual illiterate if he or she cannot read  
15 or write a simple message, such as instructions or inventory  
16 lists, even though the individual can sign his or her name.

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17 <sup>29</sup> 2020 WL 885690 at \*10586.

18 <sup>30</sup> Social Security Ruling, SSR 20-01p: How We Determine an  
19 Individual's Education Category. 2020 WL 1083309, n. 8 (Mar. 9,  
20 2020).

1       *We will assign an individual to the illiteracy category only if*  
2       *the individual is unable to read or write a simple message in*  
3       *any language.*

4       **B. Formal Education and the Ability To Read and**  
5       **Write a Simple Message**

6       Generally, an individual's educational level is a reliable  
7       indicator of the individual's ability to read and write a  
8       simple message. A strong correlation exists between formal  
9       education and literacy, which under our rules means an  
10      ability to read and write a simple message. *Most individuals*  
11      *learn to read and write at least a simple message by the time*  
12      *they complete fourth grade, regardless of whether the*  
13      *schooling occurred in the United States or in another*  
14      *country.* We will therefore use an individual's formal  
15      education level as the starting point to determine whether  
16      the individual is illiterate.<sup>31</sup> (emphasis added)

17      It is clear that the ALJ's finding that Plaintiff's sixth grade  
18      education in Mexico and her admitted ability to read and write short,  
19      simple messages in Spanish preclude a finding that she is illiterate.

20      Plaintiff argues in her Reply that even though 20 C.F.R. §  
21      404.1564 was amended the VE testimony remains flawed because the  
22      VE identified jobs with a Dictionary of Occupational Titles (DOT)

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23      <sup>31</sup> Social Security Ruling, SSR 20-01p: How We Determine an  
Individual's Education Category | Pending/Proposed Regulations |  
United States | Westlaw Precision. (last viewed April 25, 2025.)

1 language level of 1 or 2 and those jobs require that Plaintiff be able to  
2 read and write English and thus a conflict existed that the ALJ did not  
3 resolve.<sup>32</sup> This argument is also unavailing.

4         The Court finds no conflict existed. For purposes of identifying  
5 and classifying jobs pursuant to the DOT, a job at language level 2 does  
6 not provide that *English* language skills are required, and rather only  
7 requires clear language skills of no particular language.<sup>33</sup> Pursuant to  
8 the DOT, a job with a language level of 3 does indicate  
9 that *English* language skills are required, but no such requirement  
10 exists at language levels 1 and 2.<sup>34</sup> Each of the jobs identified by the  
11 VE and relied on by the ALJ has a language level of 2 or lower.<sup>35</sup>  
12  
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14         Plaintiff has erred in interpreting 20 C.F.R. § 404.1564 to require  
15 specific proficiency in English language skills to prove literacy.  
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17  
18 <sup>32</sup> ECF No. 15.

19 <sup>33</sup> Dictionary Of Occupational Titles, 4<sup>th</sup> Edition (1991) Appendix C:  
20 Components of the Definition Trailer.

21 <sup>34</sup> *Id.*

22 <sup>35</sup> AR 37.  
23



1 The Court finds that the ALJ's consideration of Plaintiff's  
2 educational level and the VE's testimony was reasonable. Accordingly,  
3 the Court finds that the ALJ did not err in accepting the VE's  
4 testimony regarding the number of jobs in the national economy which  
5 Plaintiff could perform and declines to remand as to this issue.  
6

7 **IV. Conclusion**

8 Accordingly, **IT IS HEREBY ORDERED:**

- 9 1. The ALJ's nondisability decision is **AFFIRMED**.  
10 2. The Clerk's Office shall **TERM** the parties' briefs, **ECF**  
11 **Nos. 10 and 14**, enter **JUDGMENT** in favor of the  
12 **Commissioner**, and **CLOSE** the case.  
13

14 IT IS SO ORDERED. The Clerk's Office is directed to file this  
15 order and provide copies to all counsel.

16 DATED this 29<sup>th</sup> day of April 2025.

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18 \_\_\_\_\_  
19 EDWARD F. SHEA  
20 Senior United States District Judge  
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